

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
FM Table of Allotments,)	MB Docket No. 05-147
FM Broadcast Stations.)	RM-10823
(Lake Park, Florida))	
)	
Reclassification of License)	
of Station WHYI-FM, Fort Lauderdale, Florida)	

NOTICE OF PROPOSED RULE MAKING

Adopted: March 21, 2005

Released: March 23, 2005

Comment Date: May 10, 2005

Reply Comment Date: May 25, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a petition for rule making filed by Charles Crawford ("Petitioner"), requesting the allotment of Channel 262A at Lake Park, Florida, as its first local aural broadcast service.¹ This proposal requires the reclassification of Station WHYI-FM, Channel 264C, Fort Lauderdale, Florida to specify operation on Channel 264C0.²

2. Station WHYI-FM is subject to reclassification as a Class C0 facility pursuant to the reclassification procedures adopted in the Commission's *Second Report and Order*, MM Docket No. 98-93,³ Note 2 to Section 1.420(g), and Note 4 to Section 73.3573 of the Commission's rules. Station WHYI-FM operates on Channel 264C with an effective radiated power ("ERP") of 100 kilowatts ("kW") at 307 meters height above average terrain ("HAAT"), which is below the minimum Class C antenna height of 451 meters HAAT. The distance between the requested site for proposed Channel 262A at Lake Park, Florida and the Station WHYI-FM licensed site at Fort Lauderdale is 89 kilometers. A minimum distance separation of 95 kilometers is required in this instance. However, if Station WHYI-FM is reclassified to operate as a Class C0 facility, the short spacing issue will be eliminated. Pursuant to the requirements set forth in Section 73.3573 Note 4, we issued an *Order to Show Cause*⁴ directed to Clear

¹ Lake Park is an incorporated town listed in the 2000 U.S. Census with a population of 8,721 persons. Petitioner states that Lake Park has its own mayor, town manager, elementary school, fire department, police department, post office, and a number of local churches.

² The Petitioner also requested the reclassification of Station WKIS, Channel 260C, Boca Raton, Florida to specify operation as a CO facility to accommodate the proposed Lake Park allotment. Station WKIS's license was reclassified to specify operation on Channel 260C0 at Boca Raton on March 15, 2005 to reflect the modification of Class pursuant to the grant of Station WCKT-FM permit, BPH-20030331AKR. See BLH-19871216KH.

³ See 1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules.

⁴ See *Reclassification of License of FM Station WKIS, Boca Raton, Florida and WHYI-FM, Fort Lauderdale, Florida*, 19 FCC Rcd 17449 (MB 2004).

Channel Broadcasting Licenses, Inc. ("Clear Channel"), licensee of Station WHYI-FM, Fort Lauderdale, Florida, affording it 30 days to express in writing an intention to seek authority to upgrade its technical facilities to preserve Class C status, or to otherwise challenge the proposed action. No response was received from Clear Channel. Therefore, in accordance with the Commission's reclassification procedures noted above, the license for Station WHYI-FM will be reclassified in the context of this proceeding to specify operation on Channel 264C0 instead of Channel 264C at Fort Lauderdale, Florida.

3. The proposal warrants consideration because it could provide a first local aural broadcast service to Lake Park. A staff engineering analysis has determined that the reclassification of Station WHYI-FM to specify operation on Channel 264C0 at Fort Lauderdale will eliminate any short spacing to requested Channel 262A at Lake Park, using Petitioner's requested site 4.7 kilometers (2.9 miles) south of the community at coordinates 26-45-29 NL and 80-03-28 WL

4. Accordingly, we seek comment on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

<u>Channel No.</u>		
<u>City</u>	<u>Present</u>	<u>Proposed</u>
Fort Lauderdale, Florida	264C, 278C, 290C, 294C	264C0, 278C, 290C, 294C
Lake Park, Florida	---	262A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached *Appendix* and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the *Appendix* before a channel will be allotted. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments or counterproposals on or before May 10, 2005, and reply comments on or before May 25, 2005, and are advised to read the *Appendix* for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Counterproposal filed in this proceeding need only protect Station WHYI-FM, Fort Lauderdale, Florida, as a Class C0 allotment. Additionally, a copy of such comments should be served on Petitioners' counsel, as follows:

Charles Crawford
4553 Bordeaux Avenue
Dallas, Texas 75205

6. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. We caution parties that the Commission continues to experience delays in receiving U.S. Postal Service mail. The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. **All filings must be addressed to the Office of the Secretary, Federal Communications Commission. Any filing that is not addressed to the Office of**

the Secretary will be treated as filed on the day it is received in the Office of the Secretary. *See* 47 C.F.R. § 1.7. Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.⁵ This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

8. For further information concerning this proceeding, contact Rolanda F. Smith (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a *Notice of Proposed Rule Making* until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioners constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau

Attachment: Appendix

⁵ *See Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Makings to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules.* 46 FR 11549 (February 9, 1981).

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. The person filing the comments shall serve comments on the petitioners. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.